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No. 644

In The
Supreme Court of the United States
OCTOBER TERM, 1966

EXLEY EXPRESS, INC., *Appellant,*

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, et al, *Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

JURISDICTIONAL STATEMENT

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THE ARGUS PRESS, SEATTLE, WASHINGTON

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In The
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OCTOBER TERM, 1966

EXLEY EXPRESS, INC., *Appellant*,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, et al, *Appellees*.

No. ——

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

JURISDICTIONAL STATEMENT

Appellant appeals from a judgment of the United States District Court for the District of Oregon, entered June 27, 1966, dismissing a complaint which sought to annul and set aside an order of the Interstate Commerce Commission which, in appellant's view, granted Albany Food Products, Inc. far broader "grandfather" motor common carrier authority than that to which Albany's operations entitle it. This statement is submitted to show that the Supreme Court of the United States has jurisdiction of this appeal and that a substantial question is presented.

OPINIONS BELOW

The opinion and judgment of the District Court of Oregon (unreported) is set forth in Appendix A hereof. The order (unreported) of the Interstate Commerce Commission dated May 6, 1965, referred to in Appendix A hereof, is set forth in Appendix B hereof. A corrective order issued September 9, 1965, is set forth in Appendix C hereof. Other relevant reports and orders of the Commission, all under the title of *Albany Food Products, Inc., Common Carrier "Grandfather" Application,* ICC Docket No. MC 118045, are attached to the complaint as follows:

Exhibit A — Report and Order recommended by Joint Board No. 5, served May 13, 1960;

Exhibit B — Order of the Interstate Commerce Commission, Division 1, of September 27, 1960;

Exhibit C — Report and Order recommended by Joint Board No. 5, served April 28, 1961;

Exhibit D — Report of Division 1 of the Commission served January 4, 1962; 1962;

Exhibit E — Order of Division 1 acting as the Appellate Division of the Interstate Commerce Commission served June 18,

Exhibit F — Order of Division 1 of the Interstate Commerce Commission acting as the Appellate Division served January 5, 1965.

JURISDICTION

Appellant seeks review of a judgment rendered by a three-judge District Court in an action brought by appellant seeking to annul and set aside orders of the Interstate Commerce Commission. The lower court judgment sustained the order of the Commission which granted Albany Food Products, Inc. far broader "grandfather" authority than it was entitled to under the Transportation Act of 1958.

The action in the lower court was brought pursuant to the provisions of Sec. 17(9) and 205(h) of the Interstate Commerce Act, as amended (Title 49 USCA, Sec. 14(9) and 305 (h)) pursuant to title 28 USCA, Sec. 1336, 1398, 2284 and 2321 through 2325, inclusive. In accordance with the provisions of Sec. 2284, a three-judge District Court was convened to hear the case. The opinion and judgment of the District Court was dated and entered on June 27, 1966. Notice of appeal was filed in District Court on August 11, 1966. The jurisdiction of the Supreme Court to review the judgment below by direct appeal was conferred by 28 USC Sec. 1253 and Sec. 2101(b). The following decisions sustain the jurisdiction of this court to review on direct appeal the judgment in this case: *Interstate Commerce Commission v. Hoboken Manufacturers R. Co.*, 320 U.S. 368 (1943); *American Trucking Ass'n., Inc. v. U.S.*, 364 U.S. 1 (1960); *Interstate Commerce Commission v. New York, N.H. & H.R. Co.*, 372 U.S. 744 (1963).

QUESTIONS PRESENTED

1. Whether the Commission's order granting Albany Food Products, Inc. such broad and extensive "grandfather" authority is based upon adequate findings and supported by substantial evidence.

(We believe the evidence shows that Albany Food Products' operations of sufficient substantiality to warrant issue of a "grandfather" certificate were confined to service between the points covered by the order served January 4, 1962, and that the certificate initially issued by the Commission embodies and embraces all the authority that is warranted on the record.)

2. Whether there is a substantial parity between Albany Food Products' bona fide operations on and prior to May 1, 1958, as compared to the operations authorized by the certificate the Commission issued.

STATEMENT OF THE CASE

On December 5, 1958, Albany Food Products, Inc. filed an application pursuant to the "grandfather" provisions of Sec. 7(c) of the Transportation Act of 1958 (49 USC, Sec. 303(b)(6)), as amended by Sec. 7 of Public Law 85-625). By its application Albany sought a certificate authorizing operations in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of frozen fruits, frozen berries, and frozen vegetables between points in California, Wash-

ington and Oregon.

The initial hearing on the application was held at Portland, Oregon February 1, 1960, before Joint Board No. 5, composed of representatives of the States of Washington and Oregon. A number of rail and motor carriers, including the appellant, opposed the application.

Testimony advanced at the hearing showed that from 1947 until February 13, 1959, the applicant was engaged in the packing and processing of frozen fruits, frozen berries, and frozen vegetables. As of May 1, 1958, the applicant owned one truck and semi-trailer used primarily for hauling merchandise from the applicant's plant to its consignees.

The applicant presented evidence of only 39 shipments it had transported on or prior to May 1, 1958. One was a regulated item not entitled to consideration, 28 were shipments of frozen vegetables that originated in Albany, Oregon, one was a combined shipment of frozen vegetables and frozen berries that originated at Albany. Only one shipment, from Chehalis, Wash. to Redwood City and Millbrae, Calif. moved from any points in Washington to any point in California. Only three of the 39 shipments originated at points in California; there were single shipments from Santa Clara, Calif. to Eugene, Oreg. No shipment moved from California to Washington. The applicant presented evidence of only one shipment of frozen fruit that moved on or prior to the statutory

date. This was transported exactly on the statutory date of May 1, 1958, and moved from Watsonville, Calif. to Eugene, Oreg. The evidence does not reflect any other shipments from Watsonville, Calif. to Eugene, Oreg. during the 18-month period. In fact, the only other shipment shown from Watsonville, Calif. to any destination was a shipment of apples from Watsonville, Calif. to Corvallis, Oreg.

On the basis of the showing made by the applicant, the Joint Board found applicant entitled to authority to operate as a common carrier by motor vehicle, over irregular routes, of frozen vegetables (1) from Albany, Oreg. to Seattle and Burlington, Wash., ports of entry on the international boundary between the United States and Canada at or near Blaine and Sumas, Wash. and points in San Francisco, Alameda, and Los Angeles Counties, Calif. and (2) from Seattle to Corvallis, Oreg.

In June, 1960, the applicant filed exceptions and petitioned for further hearing. The applicant's petition was granted and further hearing was held in Portland, Oreg. December 14, 1960. Another exhibit was introduced. Applicant's new evidence showed many additional shipments but failed to reveal any shipments of frozen vegetables both before and after the critical date between any combination of points not covered by the initial order.

As to frozen berries, the Board found applicant entitled to authority from Albany, Oreg. to points in San

Francisco, Alameda, and Los Angeles Counties, California on the basis of movements both before and subsequent to the statutory date.

The only movements of fruit which the applicant showed it had transported both before and after the "grandfather" date were shipments of apples from Watsonville, Calif. to Corvallis, Oreg., one of which was made in 1957, two in 1958 prior to May 1, and three in 1958 after May 1 and one in 1959. The Board found that the shipments in question do not reflect sufficient continuity of operation to justify the grant of the "grandfather" authority of frozen fruits.

Again the applicant filed exceptions and the protestants replied. On January 4, 1962, the Commission issued the order which is set forth in Exhibit D of the complaint.

In February, 1962, the applicant petitioned for reconsideration. The protestants replied. The petition was denied by the order set forth in Exhibit E of the complaint.

On June 12, 1964, the applicant filed a second petition for reconsideration, to which the protestants replied. Then, on May 6, 1965, the Commission reconsidered and issued an order (Appendix B) in which the Commission found that "applicant was, on May 1, 1958, in bona fide operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of frozen fruits, frozen berries, and frozen vegetables, (1) from

points in Oregon west of U. S. Highway 97 to points in California and those in Washington west of U. S. Highway 97, (2) from points in Washington to points in California and those in Oregon west of U. S. Highway 97, and (3) from points in California to points in Oregon and Washington west of U. S. Highway 97."

On August 4, 1965, the Commission issued a certificate authorizing the service described above.

Whereupon, the appellant filed the instant suit in the United States District Court of Oregon in which it requested the court to review and set aside the Commission's order of May 6, 1965. The court's order of June 27, 1966, is attached hereto as Appendix A. This appeal follows.

Appellant contends: (1) That on the basis of the evidence Albany Food Products' operations of sufficient substantiality to warrant issuance of a "grandfather" certificate were confined to service between the points covered by the order served January 4, 1962 (Exhibit D to the complaint), and the certificate initially issued by the Commission embodies and embraces all the authority the Commission is warranted in awarding the applicant.

(2) The Commission's order in this case violates the "substantial parity" rule that has prevailed in determining "grandfather" applications since *Alton R. R. Co. v. United States,* 315 U.S. 15, 62 S. Ct. 432, and was followed in

United States v. Carolina Freight Carriers Corp., 315 U.S. 475, 480.

(3) The operations of Albany Food Products, Inc. prior to May 1, 1958, were extremely limited and essentially confined to those operations authorized by the certificate initially issued by the Commission. The order which the Commission issued on reconsideration authorized far more extensive operations than the applicant is entitled to under the "grandfather" clause of the Transportation Act of 1958. It clearly exceeds the mandate of the act.

(4) Appellant is entitled to have the "grandfather" authority that is issued to Albany Food Products so limited as to permit that company to engage in only those operations in which it had been engaged on and since May 1, 1958.

(5) The Commission exceeded its authority in granting Albany Food Products far broader "grandfather" authority than that to which its operations entitle. Such action has had the effect of denying appellant equal protection of the laws.

QUESTIONS ARE SUBSTANTIAL

From the foregoing statements, the conclusion would seem to be inescapable that the questions presented are so substantial as to require this court's plenary consideration, with briefs on the merits and oral argument, for resolution.

Sec. 7(c) of the Transportation Act of 1958 clearly contemplates that "grandfather" applicants will not be granted greater authority than that which will enable them to continue to perform substantially the same operations in which they were engaged in May 1, 1958. To permit greater operations is to exceed the mandate of the Congress and to defeat the purpose of regulation. Albany Food Products was not engaged in bona fide operations in the transportation of frozen fruits, frozen berries and frozen vegetables from points in California to points in Oregon and Washington; it was not engaged in such transportation from points in Washington to points in California; its operations from Oregon to California were essentially limited to traffic originating at Albany, Oreg.

It is obvious that the order complained of far exceeds the Commission's authority, and is not supported by substantial evidence.

CONCLUSION

For the reasons stated above, appellant requests that probable jurisdiction of this appeal be noted; or, in the alternative, that the judgment of the court below be reversed and the case remanded to the Commission for reconsideration.

Respectfully submitted,

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

EXLEY EXPRESS, INC., *Plaintiff*, vs. UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Defendants*, And ALBANY FOOD PRODUCTS, INC., *Intervening Defendants.*	Civil No. 65-427 **ORDER AND JUDGMENT**

It appearing to the Court that the order of the Commission dated May 6, 1965, is supported by substantial evidence and is not arbitrary or capricious,

NOW, THEREFORE, the order of the Commission is hereby affirmed and this action dismissed.

Dated this 27th day of June, 1966.

BEN. C. DUNIWAY
Circuit Judge

GUS J. SOLOMON
District Judge

JOHN F. KILKENNY
District Judge

APPENDIX B

NO. MC-118045

ALBANY FOOD PRODUCTS, INC., COMMON CARRIER "GRANDFATHER" APPLICATION

Decided May 6, 1965

On reconsideration, findings in prior report modified. Applicant found entitled to continue operations as a common carrier by motor vehicle of frozen fruits, frozen berries, and frozen vegetables from and to specified points and territories in named States by reason of having been engaged in such operations on and continuously since May 1, 1958. Issuance of a certificate approved upon compliance by applicant with certain conditions, and application in all other respects denied.

Earl V. White for applicant.

James T. Johnson, Robert B. Batchelder, Randall B. Kester, John G. McLaughlin, John M. Hickson, and *Howard E. Roos* for protestants.

REPORT OF THE COMMISSION ON RECONSIDERATION

DIVISION 1, ACTING AS AN APPELLATE DIVISION, COMMISSIONERS MURPHY, TUCKER, AND BROWN

MURPHY, *Commissioner:*

By application filed December 5, 1958, under the "grandfather" provision of section 7(c) of the Transportation Act of 1958, Albany Food Products, Inc., of Albany, Oreg., seeks a certificate of public convenience and ne-

cessity authorizing the continuance of operations, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of frozen fruits, frozen berries, and frozen vegetables, between points in California, Washington, and Oregon. The application is opposed by class I rail carriers in the western district, member lines of the Pacific Southwest Railroad Association, Exley Express, Inc., Los Angeles-Seattle Motor Express, Inc., Pacific Intermountain Express Co., Home Transfer and Storage Co., and Refrigerated Truck Lines.

In the prior report, decided December 26, 1961 (not printed), division 1 granted applicant authority to transport (1) frozen vegetables (*a*) from Albany, Oreg., to Arlington, Seattle, and Burlington, Wash., ports of entry on the international boundary between the United States and Canada at or near Blaine and Sumas, Wash., and points in San Francisco, Alameda, and Los Angeles Counties, Calif., (*b*) from Watsonville, Calif., to Corvallis, Oreg., (*c*) from Mount Vernon, Wash. to Los Angeles, Calif., and (d) from Seattle, Wash., to Corvallis, Oreg., (2) frozen berries (*a*) from Albany, Oreg., to Seattle, Wash., and points in San Francisco, Alameda, and Los Angeles Counties, Calif., (*b*) from Tacoma, Wash., to Albany, Oreg., and (*c*) from Kent, Wash., to Los Angeles, Calif., and (3) frozen fruits (*a*) from

Watsonville, Calif., to Corvallis, Oreg., and (*b*) from Tacoma, Wash., to Watsonville, Calif. Applicant's petition for reconsideration was denied by division 1, acting as an appellate division, on June 11, 1962, and a certificate of public convenience and necessity embracing the operating rights granted by division 1 was issued on August 28, 1962. Subsequently, on June 15, 1964, applicant filed a petition requesting leave to file a tendered further petition for reconsideration. This request was granted by appellate division 1's order of December 23, 1964. Replies to the petition were filed by rail carriers on January 25, 1965, and by Los Angeles-Seattle Motor Express and Exley Express, Inc., separately, on February 1, 1965. We have determined to reopen the proceeding for reconsideration herein in light of the apparent inconsistency of certain findings and conclusions of the prior report with the Commission's recent review of the 1958 "grandfather" standards in *Willis Shaw Frozen Exp., Inc., Com. Car. Application,* ___ M.C.C. ___, decided February 2, 1965, on remand from the United States Supreme Court in *Willis Shaw Frozen Exp., Inc., v. United States,* 377 U. S. 159.

In its petition applicant asserts (1) that the restrictive operating rights granted in the prior report have resulted in a substantial curtailment of its operations to the extent

that only increased transportation of exempt commodities has enabled it to stay in business, (2) that the atomized grant of authority is not commensurate with the scope of service provided by applicant on the critical date and will not allow for a practical motor carrier operation, (3) that the three involved commodities should be considered as a single class, (4) that territorial authority should be granted to allow adequate flexibility of operation by applicant, and (5) that the instant application should be reconsidered in light of the Supreme Court's decision in *Willis Shaw, supra,* and other recent court cases involving the 1958 "grandfather" act. Applicant requests that authority be granted from points in California to points in Oregon and Washington west of the Cascade Range, from points in Oregon to points in California and those in Washington west of the Cascade Range (including ports of entry on the international boundary line), and from points in Washington to points in Oregon and California. In reply protestants collectively contend (1) that because applicant has been limited to the rights granted in its certificate No. MC-118045 for over 2 years, it cannot meet the statutory requirement of continuous operation since the critical date, (2) that the court's decision in *Winter Garden Co. v. United States,* 211 F. Supp. 280, cited by applicant, does not support the conclusion that

frozen fruits, berries, and vegetables must be treated as a single commodity class (see *Frozen Food Exp., v. United States,* 219 F. Supp. 131), (3) that applicant's claim of adverse effect because of a limited grant is not a relevant consideration, and (4) that, in summary, applicant is not entitled to more authority than it has already received.

The facts have been fully and accurately set forth in the prior report and will not be repeated in detail here. The evidence may be briefly summarized as follows: From 1947 to February 16, 1959, applicant's principal business was the packing and processing of frozen fruits, berries, and vegetables. During the same period it also utilized one tractor-trailer unit for the transportation of the involved commodities. Since February 1959 it has discontinued its processing operations, having leased its plant and equipment to another company, but it continues to perform motor carrier operations. At the time of the further hearing herein it had increased its equipment to two units. The prior report found, and we affirm that finding here, that applicant's operations on and since the critical date have been those of a for-hire carrier as contemplated by the "grandfather" act. Shipments transported by applicant upon which it relies for the "grandfather" authority sought herein are listed in organized form in the appendixes to the prior report. 98 M.C.C.

DISCUSSION AND CONCLUSIONS

In the *Willis Shaw* case, *supra*, the Commission found, as particularly pertinent to the instant proceedings,[1] that although there is no requirement as a matter of law that frozen fruits, berries, and vegetables be treated as a single commodity class, such a finding may be made if the facts in a particular situation warrant it, and (2) that an applicant's operations should not be frozen into a precisely delineated, point-for-point operation where it is shown that applicant has held itself out and provided service to representative points throughout a particular area or territory. We believe that in view of the above findings, applicant is entitled to "grandfather" rights somewhat more extensive than those authorized in the prior report.

Protestants argue that because since August 1962, applicant has been authorized to operate only within the scope of its certificate, it cannot establish continuous operations up to the present time. We find no merit in this contention. Applicant established continuous operation up to the time of hearing. The effect of our findings is to apply the proper standards to the evidence adduced

[1]The Commission also found, *inter alia*, that a cutoff date generally applicable to all "grandfather" proceedings should not be applied in resolving the question of remoteness of shipments, but that finding is of no real significance here, since only one shipment was shown to have been moved by applicant in 1956 and authority was granted to cover that operation.

at that hearing. Applicant has not slept on its rights and is entitled to a presumption that its operations would have continued as before the issuance of its present certificate which is too narrowly drawn. Moreover, considering the circumstances, the break in operations is not significant.

It is clear that applicant's operations in Oregon[2] and Washington (except outbound) have been limited almost entirely to points west of U. S. Highway 97[3] and that California operations have involved widespread points throughout the State. Shipments of all three of the involved commodities have moved between scattered points throughout this territory, although there have been comparatively few shipments of frozen fruit. Viewing applicant's "grandfather" operations as a whole, we are persuaded that the evidence supports the conclusion that applicant has handled the three commodities as a single class, and they will be so regarded herein.

Shipments from Oregon have moved to three points in western Washington (all before and after the critical date) and numerous points in California. From 11 Wash-

[2]Two shipments from Weston, Oreg., prior to the critical date appear to be unrelated to applicant's overall operation from and to northwestern points in that State.

[3]Applicant suggests the Cascade Range as a dividing line, but that description appears to be indefinite and administratively undesirable.

ington origin points, 4 western Oregon points have been served, 2 both before and 4 after May 1, 1958, and 4 California points have received shipments, 2 both prior and subsequent to the critical date. Territorial authority appears warranted in the circumstances.

Looking at northbound operations from California points, shipments from 10 origin points moved to 5 points in western Oregon. Four of the destination points were served before the critical date and 3 thereafter, but only Corvallis received shipments both before and after the date. The prior report granted authority only for the transportation of frozen fruits and vegetables from Watsonville to Corvallis. The standards announced in the *Willis Shaw* case, *supra*, require a more liberal grant of authority. It is apparent that despite applicant's failure to provide service *both* before and after the critical date as to individual points other than Corvallis, it served numerous representative points throughout the involved territories both prior and subsequent to May 1, 1958. The same situation prevails with respect to operation from California to western Washington points, where six widespread origins and three destination points (all before and after the critical date) were served. Authority from California to points in Oregon and Washington west of U. S. Highway 97 will be granted.

ALBANY FOOD PRODUCTS, INC., "GRANDFATHER" APPLICATION

FINDINGS

On reconsideration, we find that applicant was, on May 1, 1958, in bona fide operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of frozen fruits, frozen berries, and frozen vegetables, (1) from points in Oregon west of U. S. Highway 97 to points in California and those in Washington west of U. S. Highway 97, (2) from points in Washington to points in California and those in Oregon west of U. S. Highway 97, and (3) from points in California to points in Oregon and Washington west of U. S. Highway 97 and has not operated since that time; that an amended certificate authorizing the continuance of such operations should be granted; and that in all other respects the application should be denied.

Upon compliance by applicant with the requirements of sections 215, 217, and 221(c) of the Interstate Commerce Act and with our rules and regulations thereunder within the time specified in the order entered concurrently herein, an appropriate amended certificate will be issued. An appropriate order will be entered.

COMMISSIONER BROWN concurs in the result.

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, Acting as an Appellate Division, held at its office in Washington, D. C., on the 6th day of May A. D. 1965.

No. MC-118045

ALBANY FOOD PRODUCTS, INC., COMMON CARRIER "GRANDFATHER" APPLICATION

It appearing, That on December 26, 1961, the Commission, division 1, made and filed its report and order in the above-entitled proceeding, granting the application in part;

It further appearing, That applicant's petition for reconsideration, filed February 21, 1962, was denied by order of division 1, acting as an appellate division, on June 11, 1962;

It further appearing, That on August 28, 1962, applicant was issued Certificate No. MC-118045, embracing the operating rights granted in the above-described report of December 26, 1961;

It further appearing, That applicant's request for leave to file a further petition for reconsideration of the above-described order, filed June 15, 1964, was granted by division 1, acting as an appellate division, on December 23, 1964;

It further appearing, That replies to the above described petition for reconsideration were filed by pro-

testant rail carriers, jointly on January 25, 1965, and by protestants Los Angeles-Seattle Motor Express and Exley Express, Inc., separately, on February 1, 1965;

Wherefore, upon consideration of the record in the above-entitled proceedings, and of the above-described petition and replies; and good cause appearing therefor:

It is ordered, That the orders dated December 26, 1961, and June 11, 1962, be, and they are hereby, vacated and set aside, and that the above-entitled proceedings be, and it is hereby, reopened for reconsideration on the present record;

And it further appearing, That full investigation of the matters and things involved in the above-entitled proceeding has been made, and the Commission, division 1, acting as an appellate division, on the date hereof, has made and filed a report on reconsideration herein, containing its findings of fact and conclusions thereon, which report, and the report of December 26, 1961, are hereby referred to and made a part hereof:

It is ordered, That the above-entitled application, except to the extent granted herein, be, and it is hereby, denied, effective June 21, 1965.

And it is further ordered, That unless compliance is made by applicant with the requirements of sections 215, 217, and 221(c) of the Interstate Commerce Act within 90 days after the date of service hereof, or within such

additional time as may be authorized by the Commission, the grant of authority made in said report on reconsideration shall be considered as null and void and the application shall stand denied its entirety effective upon the expiration of the said compliance time.

By the Commission, Division 1, Acting as an Appellate Division.

BERTHA F. ARMES,
Acting Secretary.

(SEAL)

APPENDIX C

ORDER

SERVICE DATE
SEPTEMBER 14, 1965

At a Session of the Interstate Commerce Commission, Division 1, Acting as an Appellate Division, held at its office in Washington, D.C., on the 9th day of September, 1965.

NO. MC-118045

ALBANY FOOD PRODUCTS, INC., COMMON CARRIER "GRANDFATHER" APPLICATION

It appearing, That the report in this proceeding, reported at 98 M.C.C. 618, contains the following on Sheet 622 at lines 19-28: "On reconsideration, we find that applicant was, on May 1, 1958, in bona fide operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of frozen fruits, frozen berries, and frozen vegetables, (1) from points in Oregon west of U. S. Highway 97 to points in California and those in Washington west of U. S. Highway 97, (2) from points in Washington to points in California and those in Oregon west of U. S. Highway 97, and (3) from points in California to points in Oregon and Washington west of U. S. Highway 97, and has not operated since that time";

It further appearing, That the word "not" appearing at the end of line 27 was obviously a typographical error;

It is ordered, That the said report be, and it is hereby, modified by striking the clause quoted in the first appearing paragraph hereof and substituting the following in lieu thereof: "On reconsideration, we find that applicant was, on May 1, 1958, in bona fide operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of frozen fruits, frozen berries, frozen vegetables, (1) from points in Oregon west of U. S. Highway 97 to points in California and those in Washington west of U. S. Highway 97, (2) from points in Washington to points in California and those in Oregon west of U. S. Highway 97, and (3) from points in California to points in Oregon and Washington west of U. S. Highway 97, and has so operated since that time";

It is further ordered, That such correction should be reflected in the bound volumes of the Commission's motor carrier reports.

By the Commission, Division 1, Acting as an Appellate Division.

H. NEIL GARSON
Secretary

(SEAL)